



POLICE DEPARTMENT

October 25, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jose Gordian
Tax Registry No. 932733
40 Precinct
Disciplinary Case No. 2011-6397

The above-named member of the Department appeared before me on September 27, 2012, charged with the following:

1. Said Police Officer Jose Gordian, while assigned to the 40th Precinct, on or about and between March 21, 2010 and June 30, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on three (3) occasions did request the assistance of other members of the service to prevent the processing and adjudication of three (3) summonses issued to various individuals.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT GENERAL
REGULATIONS

The Department was represented by Michelle Alleyne and Anne Stone, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a 9-year uniformed member of the service (UMOS) was appointed to the Department on July 1, 2003, and is currently assigned to the 40 Precinct. Upon graduation from the Police Academy, he was assigned to the 47 Precinct for approximately six months. He was then transferred to his current command where he is on full duty status. Respondent testified that he has never been modified or suspended and this is the first time he has had Charges and Specifications in his career. Respondent also testified that in his career he has made approximately 145 arrests. Within the 40 Precinct, Respondent's duties and details have included patrol and the Conditions Unit.

Respondent acknowledged that he requested assistance from other members of the service in the prevention and the adjudication of three different summonses. Respondent stated that he made these requests on behalf of "one on my god-brother's behalf, and one on a cousin, a friend of mine." Respondent described that a god-brother was sort of like a family member and he explained that his parents were the god-parents of this individual. Respondent acknowledged that his god-brother had told him that it was a "C" summons for his girlfriend. When his god-brother had asked him to take care of the summons, Respondent stated that at that point he called his delegate, Police Officer Person E. Respondent acknowledged that he asked Person E "to take care of the summons." Respondent further testified that what he understood taking care of the summons meant was to "just pull it out of the box so it doesn't get processed."

The second summons that Respondent had made a request to be removed was for a friend of his and once again he had called Person E. Respondent acknowledged that as far as he knew this summons was also taken care of. The third summons that Respondent had made a request for was for another friend of his and Respondent this time called Police Officer Person F for assistance. Respondent stated that the reason he decided to help these family members and friends that had asked for help, was that it was "just a courtesy to family members, a delayed courtesy sort of." Respondent explained that what he meant by a delayed courtesy was that "at the time they couldn't get in touch with me or whatever, and I just called afterwards, after the fact." Respondent acknowledged that he felt that if his family members or friends had mentioned to the officers involved that they were relatives or friends of the Respondent, then they might have not received the summonses in the first place.

On cross examination, Respondent acknowledged that he was appointed to the Department on July 1, 2003 and in his nine years with the Department he has spent most of that time at the 40 Precinct. Respondent acknowledged being primarily a patrol officer who as part of his duties, writes approximately 15 to 20 summonses a month. Respondent further acknowledged that he is familiar with the process in which summonses are returned at the end of tour. Respondent testified that the summonses are supposed to be turned in at the end of tour to the desk sergeant and the purpose of this was so that the summonses can be accounted for. Respondent testified that this begins the processing procedure with summonses that are written and when the summonses are turned into the desk officer they are scanned in by the desk officer. Respondent

acknowledged that back in 2010, when he turned the summonses into the desk officer, there was a box or an area where he was supposed to submit the summonses.

Respondent acknowledged being familiar with the term professional courtesy and agreed that he would describe professional courtesy as essentially giving someone "an out of a ticket before you write the ticket." Respondent further acknowledged that he would give professional courtesy when a person was either a family member of uniformed personnel or perhaps someone he believed was elderly or infirm, that he wanted to give a break to. Respondent acknowledged doing so "many times" in his history as an officer and the professional courtesy he extended was actually prior to writing the summons. Respondent also acknowledged being familiar with the term "using your discretion" in writing summonses and he agreed that this would essentially be pertaining to perhaps giving someone a warning as opposed to issuing a summons. Respondent acknowledged that both professional courtesy and discretion pertained to situations before a ticket is actually memorialized or written down.

Respondent acknowledged that in the case of his family or friends, from March 21, 2010 through June 30, 2010, there were three occasions that he reached out to his delegates to stop the processing of tickets. One of the tickets was for Person A, who went to high school with the Respondent and whom the Respondent considered a good friend. Respondent testified that when he reached out to help Person A, that summons had already been issued. Respondent reached out to his union delegate Person E, which he knew to do at the time, because he stated "I was told by one of the delegates". Respondent acknowledged that his purpose in reaching out to Person E was to avoid the adjudication of Person A's ticket.

The second ticket was for Person B, who grew up with the Respondent and was “a good friend of mine.” Respondent acknowledged that like Person A, Person B was someone that he cared about and had a good friendship with. Respondent testified that when he reached out to help Person B, that summons had already been written and submitted for processing. Respondent acknowledged reaching out to Person F for Person B’s ticket and the purpose being was to expressly avoid the adjudication and processing of this ticket.

Respondent testified that he knows Person C, and she is the girlfriend of his god-brother, Person D. Respondent acknowledged that this was the “C” summons he discussed earlier on direct examination. Respondent further acknowledged that Person C was issued a “C” summons and that his intent in reaching out to the union delegate for Person C’s summons was to avoid the processing of that summons. Respondent stated that to his knowledge the summons for Person C was actually taken care of and that, by taken care of, it meant “not allowing it to get processed.”

Upon questioning by the Court, Respondent stated that he did not recall what the summons was for that was issued to Person A at the time of this proceeding but at the time of the incident he knew. Respondent did not remember what the summons was for that was issued to Person B either. Lastly, Respondent stated that he didn’t recall what the “C” summons for Person C was issued for. After a review of the file by the Advocate, there was no specificity as to the “C” summons issued to Person C, but as for the tickets to Person A and Person B, they were speeding tickets. Respondent then acknowledged recalling that Person A’s and Person B’s summonses were for speeding.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty and therefore the only issue is penalty. Respondent has acknowledged calling various delegates on three occasions asking that summonses be quashed. Two of the three were "taken care of" while a third was not because Respondent failed to make a follow-up call. Respondent essentially argues that the penalty is too high and his counsel has argued that his conduct is essentially not as bad as some of the other individuals involved as he did not "pull something from the box" nor is he "someone who went to court and had a convenient loss of memory."

The fact is that by asking for a favor he effectively was asking someone else to do those things.

Respondent described what he did as getting a "delayed courtesy" for family members. This indicates that there is still a significant lack of understanding of the issues involved in this case and those like it. Doing someone a favor or just giving "courtesy" is a practice that is fraught with trouble.

Police officers are regularly confronted with circumstances that require them to analyze a situation and make decisions that require knowledge of the law, knowledge of the rules and procedures of this Department and the use of good practical judgment.

Obviously that means that an officer on the scene of an incident has a measure of discretion.

In this case, Respondent was not calling on an officer on the scene to consider the circumstances but rather he was calling someone to do “a favor” regardless of the circumstances. For instance, we know that two of the summonses that were to be “fixed” in this case involved the traffic infraction of speeding. We don’t know if the offenders were driving five or fifty-five miles over the speed limit. Facts did not matter, doing a favor did.

There is of course the more obvious problem with this “delayed courtesy” in that it involved interfering with legal process that had been commenced. Summonses are legal documents. They form the first step in a legal process. Interfering with that legal process is a serious and significant matter. Indeed an aggravating factor in this case is that one of the summonses was returnable in Criminal Court. As the Advocate has pointed out, the Department has always regarded interfering with summonses to be a serious matter.

The Department has recommended a penalty of the forfeiture of 25 vacation days, 5 suspension days and one-year dismissal probation, citing a number of previous similar cases that have already been approved.¹ There is nothing in Respondent’s history with this Department or with the circumstances of this case that would justify a lesser penalty.

Based on the above, this Court recommends that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance

¹ Department’s Exhibit (DX) 1 was received into evidence during closing arguments. The Department prepared a list of DCT negotiated case precedent in the Bronx summons ticket fixing cases, involving two to three summonses and no fine. Ten of the 11 Respondents cited received the same penalty of 25 vacation days, 5 suspension days and one-year dismissal probation.

for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. Further, this Court recommends that Respondent forfeit 25 vacation days and 5 suspension days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials

APPROVED

DEC 17 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

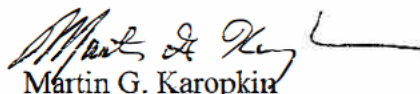
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE GORDIAN
TAX REGISTRY NO. 932733
DISCIPLINARY CASE NO. 2011-6397

In 2011, Respondent received an overall rating of 4.0 "Highly Competent." He was rated 3.5 "Competent/Highly Competent" in 2009 and 4.5 "Highly Competent"

[REDACTED]

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trial